

Spencer Coggs



State Senator

Pension Obligation Bonds Testimony Senator Spencer Coggs January 8, 2008

Chairman Gottlieb & Committee Members,

Thank you for your consideration of Assembly Bill 666, which would allow Milwaukee County to issue one time bonds to cover outstanding obligations in their pension fund.

The idea for this legislation was first introduced by the Governor's Task Force on Milwaukee County Finances, co-chaired by Secretary Mike Morgan and Sheldon Lubar. The proposal was included in the original version of the biennial budget introduced by Governor Jim Doyle, but was removed as policy.

This bill allows one time bonding for Milwaukee County and includes the following provisions:

- 1) The bonds can only be used for the unfunded pension obligations
- 2) The County would be required to fully fund its annual pension contribution
- 3) The repayment period on the bonds would be extended beyond the 20 year term applicable to general obligation bonds

It is important to note that the bill only applies to Milwaukee County and that the State Legislature in 2003 authorized the same process for Milwaukee Public Schools to cover its unfunded pension liability within the Wisconsin Retirement System.

The current bill introduced by myself and Representative Stone has the full support of Milwaukee County Board of Supervisors Chairman Lee Holloway and Milwaukee County Executive Scott Walker, as well as the full Milwaukee County Board.

Again, thank you for your consideration and support of AB 666.



Legislative Fiscal Bureau

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December 12, 2007

TO: Senator Spencer Coggs
Room 123 South, State Capitol

FROM: Al Runde, Fiscal Analyst

SUBJECT: LRB 2991/3: Milwaukee County Pension Obligation Bonds

As you requested, this memorandum provides a summary of LRB 2991/3, which would provide Milwaukee County the authority to issue appropriation bonds, on a one-time basis, to pay all or any part of the County's employee pension system's unfunded prior service liability. For the purposes of this summary, LRB 2991/3 will be referred to as the "bill".

Delegation of Investment Authority

The county board would be allowed to delegate its investment authority over the county retirement system and the other specific investments allowed under the bill. Those to whom this authority is delegated would be required to be responsible for the general administration and proper operation of the county's employee retirement system. If the governing board of the county finds that a person has expertise in the field of investments, the board could delegate this authority to: (a) a public board that is organized for such a purpose under county ordinances; and (b) a trustee, investment advisor, or investment banking or consulting firm.

Appropriation Bond Authority

The bill would authorize the county board of county having a population of 500,000, or more, (Milwaukee County) to issue appropriation bonds or 20-year general obligation promissory notes, to pay all or part of the county's unfunded prior service liability with respect to an employee retirement system of the county. The county would not be generally liable for the appropriation bonds and the appropriation bonds would not be a debt of the county for any purpose. The annual principal and interest on the appropriation bonds would be repaid from annual amounts appropriated by the county board.

The county board would be provided all the powers necessary and convenient to carry out its duties and exercise its authority related to the issuance of these bonds. Chapter 67 of statutes, which relates to municipal borrowing and municipal bonds, would not apply to these appropriation bonds.

A county would be allowed issue appropriation bonds to: (a) pay all or part of the county's unfunded prior service liability with respect to an employee retirement system of the county; (b) fund or refund outstanding appropriation bonds; (c) pay issuance or administrative expenses; (d) make deposits to reserve funds; (e) pay accrued or funded interest; (f) pay the costs of credit enhancement; (g) make payments under agreements or ancillary arrangements; or (h) make deposits to any stabilization funds created relative to the appropriation bonds. Specify that all bonds, other than refunding bonds, would have to be issued simultaneously.

The county would be allowed to borrow money and issue appropriation bonds under one or more written authorizing resolutions. Unless otherwise provided in the resolution, the borrowings and bonds could occur at any time, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner, and having any other terms or conditions that the county board considers necessary or useful. The bonds could bear interest at variable or fixed rates, bear no interest, or bear interest payable only at maturity or upon redemption prior to maturity.

As determined by the county board, appropriation bonds could be issued in book-entry form or in certificated form. Notwithstanding the Uniform Commercial Code statutes relating to negotiable instruments, every obligation would be a negotiable instrument.

Require the following related to appropriation bonds issued by a county:

- a. every appropriation bond would be executed in the name of and for the county by the county board chair and county clerk and would be sealed with the seal of the county, if any;
- b. every appropriation bond would have to be dated not later than the date issued, reference by date the appropriate authorizing resolution, and be in accordance with the authorizing resolution;
- c. every appropriation bond would have to indicate that the bonds are not a debt of the county, the county is not generally liable for the bonds, and principal and interest of the bonds is payable only from those amounts appropriated by the board; and
- d. an appropriation bond would be in such form and contain such statements or terms, as determined by the county board and could not conflict with law or with the appropriate authorizing resolution.

The bill would allow a facsimile signature of either the county board chair or county clerk to be imprinted on each appropriation bond issued by the county in lieu of the manual signature of such officer, but the signature of at least one officer would have to be manual. Any

appropriation obligation bond bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted would be fully valid, regardless of whether the person remains in office.

The bill would define an appropriation bond as a bond issued by a county to evidence its obligation to repay a certain amount of borrowed money that is payable from all of the following: (a) moneys annually appropriated by law for debt service due with respect to such appropriation bond in that year; (b) proceeds of the sale of such appropriation bonds; (c) payments received under agreements and ancillary arrangements associated with appropriation bonds; and (d) investment earnings from these amounts.

Appropriation Bond Terms

Appropriation bonds could not be issued except under a written authorizing resolution adopted by a majority of a quorum of the county board. The resolution could be in the form of a resolution or trust indenture and would be required to include the aggregate principal amount of appropriation bonds authorized, the manner of sale of the bonds, and their form and terms. The resolution could establish funds and accounts, including a reserve fund.

Appropriation bonds could be sold at either public or private sale and at any price or percentage of par value. Bonds sold at public sale would have to be noticed as provided in the authorizing resolution and any bid received at public sale could be rejected.

The county board could issue appropriation bonds having any provisions for prepayment considered necessary or useful, including the payment of any premium. Interest would cease to accrue on an appropriation bond on the date that the bond becomes due for payment if payment is made or duly provided for. All money borrowed by the county through appropriation bonds would be lawful money of the United States, and all appropriation bonds would be paid in such money.

The county, at the time of, or in anticipation of, issuing bonds or notes, or as long such bonds or notes are outstanding, could enter into agreements and ancillary arrangements relating to the bonds or notes. These agreements or ancillary arrangements could include trust indentures, liquidity facilities, remarketing or dealer agreements, letters of credit, and insurance policies, guaranty agreements, reimbursement agreements, indexing agreements, and interest exchange agreements. Any payments made or received under these agreements or ancillary arrangement would be made as provided in the agreement or arrangement.

All appropriation bonds owned or held by any county fund would be outstanding in all respects, and the board of the governing body controlling the fund would have the same rights as a private party. If any sinking fund associated with the bonds would acquire appropriation bonds, the bonds would be considered paid.

Pension Liability Strategic and Financial Plan

Before a county could issue any appropriation bonds, its board would be required to enact an ordinance that establishes a five-year strategic and financial plan related to the payment of all or part of the county's unfunded prior service liability with respect to an employee retirement system of the county. The bill would require the following relative to the strategic and financial plan: (a) that the plan provide that future annual pension liabilities are funded on a current basis; (b) that the plan contain quantifiable benchmarks to measure compliance with the plan; (c) that the county board make a determination that the ordinance establishing the plan meets these statutory requirements and, absent manifest error, the board's determination would be conclusive; and (d) that the board submits a copy of the strategic and financial plan to the Governor and to the Legislature.

The county would have to annually submit a report to the Governor, the Legislature, and the Departments of Administration (DOA) and Revenue (DOR) that includes all of the following:

- a. the county's progress in meeting the benchmarks in the pension liability strategic and financial plan required under the bill;
- b. any proposed modifications to the plan;
- c. the status of any stabilization fund that is established with respect to the financing of an employee retirement system pension liability;
- d. the most current actuarial report related to the county's employee retirement system;
- e. the amount, if any, which the county's contribution for that year is less than the normal contribution for that year, as specified in the initial actuarial report; and
- f. the amount that the actuary determines is the county's required contribution to the employee retirement system for that year.

Penalty for Inadequate County Pension Contribution

The bill would authorize DOR to reduce and withhold the county's shared revenue payment if the county's contribution to the employee retirement system for the prior year is less than the lower of the required annual contribution amount determined by an actuary, or the normal cost contribution for that year. The amount reduced and withheld would equal the difference between the required cost contribution for that prior year and the county's actual contribution in that prior year. DOR would be required to deposit the amount of the reduced and withheld shared revenue payment into the county's employee retirement system.

County Moral Obligation Pledge

If the county board considers it necessary or desirable, the board could express in a resolution authorizing appropriation bonds its expectation and aspiration that it would do the following with respect to the bonds issued: (a) make timely appropriations that are sufficient to pay the principal and interest; (b) to make payments on any agreement or ancillary arrangement related to the bonds; (c) to make deposits into a reserve fund; (d) to make payments to any stabilization fund; and (e) to pay related issuance and administrative expenses.

Exemption from Current Law Borrowing Limitations on Counties

Any notes issued by a county to pay unfunded prior liabilities with respect to an employee retirement system would not be subject to the current law requirement that municipal bonds or notes cannot be issued to fund the operating expenses of the county general fund or any special fund of the county that is supported by property taxes.

The bill would add debt issued by a county to pay unfunded prior service liabilities with respect to an employee retirement system to the current law list of items that allow counties to issue bonds or notes. The debt service on appropriation bonds issued to pay employee retirement system liabilities would be included in the current law definition of debt levy.

The levy limits under 2007 Act 20 for counties would not apply to: (a) debt service on appropriation bonds issued to fund a county's employee retirement system liability; (b) debt service on appropriation bonds issued to fund or refund outstanding appropriation bonds; (c) related issuance costs or redemption premiums; or (d) to make payments with respect to agreements or ancillary arrangements associated with the appropriation bonds.

Refunding Bond Authority

A county board could issue refunding appropriation bonds. Refunding bonds could be issued, subject to any contract rights of owners of bonds being refinanced, to refinance: (a) all or any part of one or more issues of bonds, even if the bonds may have been issued at different times; or (b) general obligation promissory notes issued by the county to pay the unfunded pension liability with respect to an employee retirement system.

The principal amount of the refunding bonds could not exceed the sum of: (a) the principal amount of the bonds or notes being refinanced; (b) applicable redemption premiums; (c) unpaid interest on the bonds or notes; (d) in the event the proceeds are to be deposited in trust, interest to accrue on the bonds from the date of delivery to the date of maturity or to the redemption date selected by county board, whichever is earlier; and (e) the expenses incurred in the issuance of the refunding bonds and payment of the refunding bonds or notes. The county board may authorize the issuance of general obligation promissory notes to refund appropriation bonds.

If a county board would determine to exchange refunding appropriation bonds, these bonds could be exchanged privately for any of the outstanding appropriation bonds being refinanced.

The refunding appropriation bonds could be exchanged for such principal amount as determined by board. Owners who elect to exchange their bonds would not have to pay accrued interest on the refunding bonds if interest is accrued and unpaid on the bonds being refunded. If any of the bonds to be refinanced are called for redemption, the county board would determine which redemption dates are to be used and would have to, prior to the issuance of the refunding appropriation bonds, provide for notice of redemption in accordance with the resolution authorizing the bonds to be refunded.

Use of Refunding Appropriation Bond Proceeds

The bill would require that the principal proceeds from the sale of any refunding appropriation bonds be applied either to the immediate payment and retirement of the bonds or notes being refinanced or, if the bonds or notes have not matured, to the creation of a trust pledged to the payment of the bonds or notes being refinanced. If a trust would be created, a separate deposit would be required to be made for each issue of appropriation bonds or general obligation notes being refinanced. Each deposit would be required to be with a bank or trust company authorized by the laws of the United States or of the state in which the bank or trust company is located to do business.

If the total amount of any deposit to a trust, including sale proceeds and other legally available moneys, is less than the principal amount of the appropriation bonds or general obligation promissory notes being refinanced together with applicable redemption premiums and interest to accrue, then the application of the sale proceeds would be legally sufficient only if: (a) the money deposited is invested in securities issued by the United States or one of its agencies, or securities fully guaranteed by the United States; and (b) the principal amount of the securities at maturity and the associated income would be sufficient and available, without the need for any other investment or reinvestment to pay the principal amount of the bonds or notes being refinanced and any applicable redemption premiums and accrued interest. Any income from the securities would be required to be applied solely to the payment of the principal, interest and redemption premiums on the appropriation bonds or general obligation promissory notes being refinanced. However, provision could be made for the pledging and disposition of any surplus.

None of the requirements relating to the use of refunding proceeds could be considered: (a) as a limitation on the duration of any deposit in trust for the retirement of appropriation bonds or promissory notes being refinanced that have not matured; or (b) to prohibit reinvestment of the income of a trust if the reinvestments mature at such times that sufficient moneys would be available to pay interest, applicable premiums, and principal on the bonds or notes being refinanced.

Administrative Requirements

All appropriation bonds would have to be registered by the county clerk or treasurer, or such other officers or agents as determined by the county board. No transfer of a registered appropriation bond would be valid unless made by the registered owner's duly authorized

attorney, on the records of the county and noted on the bond. The county could treat the registered owner as the owner of the appropriation bond for all purposes.

Unless otherwise provided by the county board, require that payments of principal and interest could only be made by electronic funds transfer, check, share draft, or other draft to the registered owner at the owner's address, as it appears on the register. Specify that information in the register would not be available for inspection and copying under state law relating to access to public records. The county board would be authorized to make any other provision with respect to registration that it considers necessary or desirable.

The county board would have the authority to appoint one or more trustees or fiscal agents for each issue of appropriation bonds. The county treasurer would be allowed to be designated as the trustee and the sole fiscal agent or a co-fiscal agent for any issue of appropriation bonds. Every other fiscal agent would have to be an incorporated bank or trust company, authorized by the laws of the United States or of the state in which it is located for banking or trust company business.

Any moneys deposited with a trustee in a special account, could be used only for the purposes provided in the resolution authorizing the issuance of appropriation bonds or in an agreement between the county and the trustee. The county board would have the authority to make other arrangements with respect to trustees and fiscal agents. The county board would also be authorized to enter into a contract with any trustee or fiscal agent containing such terms, including compensation, and conditions in regard to the trustee or fiscal agent it considers necessary.

If any appropriation bond would be destroyed, lost, or stolen, require the county to deliver a new appropriation bond if the following is provided to county board: (a) satisfactory evidence that the appropriation bond has been destroyed, lost, or stolen; (b) proof of ownership; (c) a satisfactory indemnity; (d) compliance with other rules of the county; and (e) payment of any expenses that the county would incur.

Unless otherwise directed by the county board, every appropriation bond that is paid or otherwise retired would be marked canceled and delivered to the county treasurer, or to such other fiscal agent as applicable with respect to the bond. The county treasurer or applicable fiscal agent would be required to destroy any canceled obligation and provide the county clerk a certificate indicating that the bonds have been destroyed.

Allowable Investors in Appropriation Bonds

Under the bill, the following entities could legally invest sinking funds or other funds belonging to them or under their control in appropriation bonds issued by the county:

- a. the state, the Investment Board, public officers, municipal corporations, political subdivisions, and public bodies;

b. banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies and associations, and other persons carrying on a banking or insurance business; and

c. personal representatives, guardians, trustees, and other fiduciaries.

Employee Retirement System Liability and Additional Powers

A county board, to facilitate a pension funding plan, could create one or more of the following: (a) a trust; (b) a nonstock corporation; (c) a limited liability company; and (d) a special fund or account of the county. Specify that a trust would mean a common law trust organized under the laws of this state, by the county as settlor, pursuant to a formal, written, declaration of trust.

Any such entity created by a county board would have all the powers provided to it under applicable law and the documents creating it. These powers would have to be construed broadly in favor of effectuating the entity's purposes. The county would be allowed to appropriate funds to such entities and to such accounts consistent with the entity's purposes.

A county board could establish a stabilization fund and appropriate funds for deposit to the fund to facilitate a strategic pension funding plan. A stabilization fund could be created as a trust or a special fund or account of the county established by separate resolution or ordinance. The fund could also be a fund or account created under an authorizing resolution or trust indenture in connection with the authorization and issuance of appropriation bonds or general obligation promissory notes.

Moneys in the stabilization fund established could only be used, subject to annual appropriation by the county board, to pay: (a) principal or interest on bonds and notes issued in connection with a pension funding plan; (b) for the redemption or repurchase of such bonds or notes; or (c) to make payments under any agreement or ancillary arrangement entered into with respect to such bonds or notes. Specify that moneys deposited in a stabilization fund would not be subject to any claims, demands, or actions by, or transfers or assignments to, any creditor of the county, any beneficiary of the county's employee retirement system, or any other person, on terms other than those in the resolution or ordinance creating the stabilization fund. Moneys deposited in a stabilization fund could be invested and reinvested in the manner directed by the county board or pursuant to delegation by the board, as allowed under the bill.

Allowable County Investments

Subject to current law debt service fund provisions related to general obligation promissory notes, a county, or a person to whom the county has delegated investment authority, could invest any of the following, in the same manner as is allowed under current law establishing the prudent investor rule:

a. moneys held in a stabilization fund under this provision;

- b. moneys held in a fund or account, including any reserve fund, created in connection with the issuance of bonds or notes under this provision;
- c. moneys appropriated or held by the county to pay debt service on such bonds or notes;
- d. moneys constituting proceeds of bonds or notes that are available for investment until they are spent; and
- e. moneys held in an employee retirement system of the county.

Legislative Finding and Determination

The bill would specify a legislative finding that the county, by prepaying all or part of its unfunded prior service liability with respect to its employee retirement system, could reduce its costs and better ensure the timely and full payment of retirement benefits to participants and their beneficiaries. Further the bill specifies that the Legislature determines that it is in the public interest for the county to issue appropriation bonds to obtain proceeds to pay its unfunded service liability.

Pension Study Committee Members

The bill would require that the two public members of the pension study committee, created by Chapter 405, Laws of 1965, have at least 10 years of financial experience. The five-member pension study committee, which was established when Milwaukee County was given authority to oversee its retirement system, consists of three county board supervisors and two citizens, who are residents, but not employees, of Milwaukee County. This would only apply if the county issues appropriation bonds as authorized under the bill.

Under current law, the committee is responsible for ensuring that proposed changes to retirement benefits are adequately analyzed and represent sound public policy. The committee is also required to provide the county board with a written report on the actuarial effect, cost implications, and desirability of any proposed retirement benefit changes.

Comparison to 2007-09 Budget Provision

The Governor's budget recommendations for the 2007-09 budget bill (Senate Bill 40) would have authorized Milwaukee County to issue appropriation obligation bonds to pay off their employee pension obligations. However, the Co-Chairs of the Joint Committee on Finance determined that, from the standpoint of the state's budget bill, the provisions were non-fiscal, policy provisions and removed them from the budget.

You also requested information on the major differences between the appropriation obligation bond authority provided to Milwaukee County under the bill and the SB 40 provisions. The major differences between the bill and the Governor's budget recommendations relating to

appropriation obligation authority for Milwaukee County are that the bill requires that additional information be included in the annual report that would have to be submitted to the Governor and the Legislature if the County has issued appropriation bonds to pay off all or part of the county's unfunded prior service retirement system liability. Specifically, the bill would require that the report also include the following: (a) the amount, if any, which the County's contribution for that year is less than the normal contribution for that year, as specified in the initial actuarial report; and (b) the amount that actuary determines is the County's required contribution to the employee retirement system for that year. The bill would also add DOA and DOR to the list of entities to which the report would have to be submitted.

In addition, if Milwaukee County issues appropriation obligation bonds, the bill would add a provision that would allow DOR to reduce and withhold a portion of the County's shared revenue payment if the county does not make the annual pension contributions recommended by the pension actuary. This provision could serve as a safeguard in the event the County issues appropriation bonds to pay off an unfunded pension liability but then fails to keep current on its ongoing pension responsibilities, thus incurring an additional unfunded pension liability for the County. Under the bill, DOR would have the authority to make the County's ongoing pension obligations from any withheld shared revenue payments for the County.

I hope this information is helpful. Please contact me if you have any further questions.

AR/sas



Milwaukee County

County Executive Scott Walker

Board Chairman Lee Holloway

January 7, 2008

Representative Mark Gottlieb
Assembly Speaker Pro-Tempore
State Capitol, Rm. 309N
P.O. Box 8952
Madison, WI 53708

Dear Chair Gottlieb:

Thank you for agreeing to hold a public hearing on Assembly Bill 666 in the Committee on Urban and Local Affairs. We also thank Representative Jeff Stone and Senator Spencer Coggs for authoring Assembly Bill 666, and its companion legislation Senate Bill 366, at our request. These bills would allow Milwaukee County, on a one-time basis, to issue appropriation bonds to pay all or part of the County's unfunded accrued pension liability.

Upon the recommendation of the *State Task Force on Milwaukee County Finances*, Governor Jim Doyle included similar enabling language in his 2007-09 Budget. As the Joint Committee on Finance Co-Chairs identified the measure as a non-fiscal policy item, we now ask the State Legislature to grant Milwaukee County this authority through separate legislation. The December 12, 2007, Legislative Fiscal Bureau to Senator Coggs details the legislation, including an explanation of how Assembly Bill 666 and Senate Bill 366 compare to the Governor's budget provision. Specifically, Assembly Bill 666 and Senate Bill 366 would:

- ✓ Extend the repayment period for promissory notes from 10 years to 20 years;
- ✓ Allow Milwaukee County to issue long-term obligations for a term in excess of the 20-year limit applicable to general obligation debt;
- ✓ Apply only to debt issued for the purpose of financing Milwaukee County's unfunded pension obligations.
- ✓ Require Milwaukee County to fund its pension contribution each year as determined by the actuary.

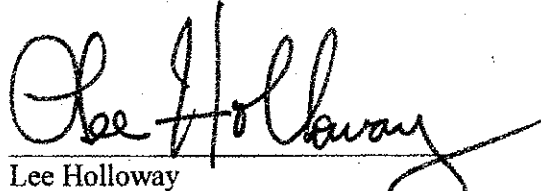
Today, we ask you to partner with us and endorse Assembly Bill 666. Provide us with the same type of financial flexibility the State utilized when financing its unfunded prior service liabilities for employee pensions. Milwaukee County stands eager to work with

the State in order to secure this statutory authority. Please let us know if we can be of any further assistance. Thank you again for hearing Assembly Bill 666.

Sincerely,



Scott Walker
Milwaukee County Executive



Lee Holloway
Chairman, Milwaukee County Board of
Supervisors

cc: Milwaukee County Board of Supervisors
Senator Spencer Coggs
Representative Jeff Stone
Assembly Committee on Urban and Local Affairs, members
Governor Jim Doyle
Senate Majority Leader Russell Decker
Assembly Speaker Michael Huebsch
Representative Jason Fields, Chair Milwaukee Caucus
AFSMCE District Council 48 Executive Director Rich Abelson
Metropolitan Milwaukee Association of Commerce President Timothy Sheehy